

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RACHELLE RAND, ESPERANZA
GOTTSCHAU, and RAMON SOTO, on
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

EYEMART EXPRESS, LLC,

Defendant.

Case No.: 3:24-cv-00621-N

**DEFENDANT EYEMART EXPRESS, LLC’S RULE
12(B)(1) AND 12(B)(6) MOTION TO DISMISS**

Defendant Eyemart Express, LLC (“Eyemart”) hereby moves to dismiss all claims asserted in Plaintiffs Rachelle Rand, Esperanza Gottschau, and Ramon Soto’s original class action Complaint (“Complaint”) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

1. Plaintiffs’ putative class action Complaint arises from allegations that Eyemart, by operating its website, violated three separate wiretap laws—the Federal Wiretap Act (Count I), the Missouri Wiretap Act (Count II), and the Illinois Eavesdropping Act (Count III)—and further that Eyemart intentionally intruded upon Plaintiffs’ seclusion (Count IV) and breached implied and express contracts (Counts V-VI). *See* Complaint.

2. As described in more detail in Eyemart’s Memorandum in Support, because Plaintiffs fail to allege any harm, they lack standing to maintain this action. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). This Court should therefore dismiss the Complaint for lack of standing pursuant to Fed. R. Civ. P. 12(b)(1).

3. Alternatively, as described in more detail in its Brief in Support, dismissal is also warranted under Fed. R. Civ. P. 12(b)(6). Plaintiffs' Complaint should be dismissed because Plaintiffs' allegations do not contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

WHEREFORE, Eyemart respectfully requests that this Court grant its Motion to Dismiss for the reasons set forth herein and the accompanying Memorandum in Support, dismiss Plaintiffs' Complaint with prejudice, and award to Eyemart any further relief to which it is justly entitled.

Dated: May 6, 2024

Respectfully submitted,

By: /s/ Andrew F. Newman
Andrew F. Newman
Texas State Bar No. 24060331
POLSINELLI PC
2950 N. Harwood Street, Suite 2100
Dallas, Texas 76005
Tel: (214) 661-5506
Fax: (214) 397-0033
Email: afnewman@polsinelli.com

John C. Cleary (*pro hac vice forthcoming*)
New York Bar No. 1969146
POLSINELLI PC
600 Third Avenue, 42nd Floor
New York, NY 10016
Tel: (212) 413-2837
Fax: (212) 684-0197
Email: john.cleary@polsinelli.com

Jonathan E. Schmalfeld (*pro hac vice forthcoming*)
Missouri Bar No. 68374
POLSINELLI PC
7676 Forsyth Boulevard, Suite 800
St. Louis, MO 63105
Tel: (314) 622-6621
Fax: (314) 231-1776
Email: jschmalfeld@polsinelli.com
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that on May 6th, 2024, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system. Any other counsel of record will be served by a facsimile transmission and/or first-class mail.

/s/ Andrew F. Newman

Andrew F. Newman